

STATE OF NEBRASKA

IN THE MATTER OF:)
)
Advantage Mortgage Service, Inc.,)
12111 Pacific Street, Omaha, Nebraska;) ORDER TO
Robert M. Goldberg, President;) SHOW CAUSE
Marcee Levine, Branch Manager;)
Gary Levine, Branch Manager; and)
Scott Levine, Former President)

THIS MATTER comes before the Nebraska Department of Banking and Finance (“DEPARTMENT”), by and through its Director, pursuant to its authority under the Mortgage Bankers Registration and Licensing Act, Neb. Rev. Stat. §§ 45-701 to 45-721 (Reissue 2004; Cum. Supp. 2006) (“the Act”). Pursuant to Neb. Rev. Stat. § 45-710 (Reissue 2004), the DEPARTMENT hereby orders that Advantage Mortgage Service, Inc., 12111 Pacific Street, Omaha, Nebraska (“ADVANTAGE”); Robert Goldberg, its President (“GOLDBERG”); Marcee Levine, its Branch Manager (“MARCEE LEVINE”); Gary Levine, its Branch Manager (“GARY LEVINE”); and Scott Levine, its former President (“SCOTT LEVINE”); show cause as to why ADVANTAGE’s mortgage banker license should not be suspended or revoked and/or a fine and costs should not be imposed upon them.

In support of this Order, the Director makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

I. BACKGROUND

1. ADVANTAGE holds a mortgage banker license under the Mortgage Bankers Registration and Licensing Act. The license was originally granted April 15, 1996, and has

been renewed annually on March 1st since that time. On March 1, 2007, the DEPARTMENT issued a provisional license to ADVANTAGE pending resolution of this matter.

2. ADVANTAGE's 1996 Mortgage Banker License Application listed Kristine L. Levine ("KRISTINE LEVINE") as President, and SCOTT LEVINE as Secretary/Treasurer. Subsequently, KRISTINE LEVINE and SCOTT LEVINE switched offices and SCOTT LEVINE became the President of ADVANTAGE while KRISTINE LEVINE assumed the role of Secretary/Treasurer.

3. On June 21, 2004, ADVANTAGE provided the DEPARTMENT with notice that GOLDBERG had been elected President of ADVANTAGE on June 15, 2004. According to the notice, SCOTT LEVINE was elected Vice President and KRISTINE LEVINE was elected Secretary/Treasurer at the same meeting.

4. On February 13, 2006, ADVANTAGE notified the DEPARTMENT that SCOTT LEVINE and KRISTINE LEVINE had resigned their offices on April 23, 2005.

5. On its 2005, 2006, and 2007 Mortgage Banker License Renewal Applications ("Renewal Applications"), ADVANTAGE listed a branch located at 12111 Pacific Street, Omaha, Nebraska ("Omaha Branch"). At all times relevant hereto, MARCEE LEVINE was the Branch Manager of the Omaha Branch.

6. On its 2005, 2006, and 2007 Renewal Applications, ADVANTAGE also listed a branch located at 35 North Main Place, Suite 175, Council Bluffs, Iowa ("Council Bluffs Branch"). At all times relevant hereto, GARY LEVINE was the Branch Manager of the Council Bluffs Branch. ADVANTAGE did not list a branch located in Lincoln, Nebraska, on any of these Renewal Applications.

7. GARY LEVINE and MARCEE LEVINE, in their positions as Branch Managers, exert substantial influence on, if not *de facto* control of, the management of ADVANTAGE.

8. From 1999 through 2004, ADVANTAGE had a branch office located at 770 North Cotner Boulevard, Suite 404, Lincoln, Nebraska (“Cotner Branch”). Linda Law (“LAW”) was the Branch Manager of the Cotner Branch commencing in 2002.

9. In the fall of 2004, a dispute arose between LAW and ADVANTAGE regarding fees associated with certain closings. Ultimately, ADVANTAGE and LAW executed a “Settlement Agreement and Release” which terminated the agreement between LAW and ADVANTAGE on October 29, 2004. At that time the Cotner Branch ceased its association with ADVANTAGE.

A. Mortgage Brokers and Mortgage Bankers.

10. ADVANTAGE operates as a mortgage broker. A mortgage broker obtains and processes financial information from customers to find entities that will loan money to purchase residential property or to refinance an existing mortgage loan. ADVANTAGE arranges loans for its customers using a variety of lenders.

11. A mortgage banker lends money to a mortgage broker’s customer. Mortgage bankers make use of customer information obtained by mortgage brokers, in order to determine whether to lend money. This customer information includes such items as salary, net worth, employment history, and similar items. Both mortgage bankers and mortgage brokers doing business in Nebraska must obtain a mortgage banker’s license pursuant to the Act, as the definition of mortgage banker under the Act encompasses banking, brokering, and servicing of mortgage loans.

12. A mortgage broker can receive compensation for its services in a number of ways. The mortgage broker can charge fees to the borrowers. Such fees are frequently denominated as “origination fee,” “processing fee,” “application fee,” and/or “mortgage broker fee.”

13. A mortgage broker can also receive compensation from the lender making the loan in the form of a yield spread premium (“yield spread”). A yield spread is sometimes referred to as a “lender paid broker commission” or “broker premium.”

14. A lender pays a yield spread when the mortgage broker has arranged a mortgage loan with a higher interest rate than the minimum rate that the lender would have been willing to accept. A yield spread essentially allows a customer to pay a broker’s fee over the life of a loan by paying a slightly higher payment to the lender each month.

15. Many of the loans originated by ADVANTAGE are “subprime loans” which are loans that are made to customers with less than perfect credit history. A common loan in the subprime market is a 2/28 adjustable rate mortgage (“ARM”) which provides for a fixed interest rate for two years and an adjustable rate thereafter.

16. ADVANTAGE and its loan officers frequently pitched the loans that they were originating by highlighting the monthly savings that they claimed were associated with consolidation of the consumer’s debt. The savings resulted from consolidating other debt into a new mortgage.

B. Required Disclosures.

17. Mortgage bankers and mortgage brokers are required to make certain disclosures to customers who have submitted an application for a mortgage loan. Within three (3) days after receiving the application, the mortgage banker or mortgage broker

must deliver a Good Faith Estimate Disclosure (“GFE”) and a Truth-in-Lending Disclosure (“TIL Disclosure”) to the borrower.

18. The purpose of the GFE is to disclose an estimate of the various fees and charges associated with the loan including, but not limited to, loan origination fees, mortgage broker fees, processing fees, title insurance fees, appraisal fees, and closing fees. If the mortgage broker intends to collect a yield spread, an estimate of the yield spread must be disclosed on the GFE pursuant to 24 CFR 3500, Appendix B, Example 13; HUD Statement of Policy 1999-1; and HUD Statement of Policy 2001-1.

19. The GFE will also disclose the amount of the loan, the interest rate, and an estimated monthly payment. For a loan with an ARM, the GFE will list the initial interest rate and the payment disclosed on the GFE will reflect only the initial interest rate, not the payment associated with any change in the interest rate.

20. The purpose of the TIL Disclosure is to disclose the lifetime costs of the loan. The TIL Disclosure discloses the annual percentage rate (“APR”), amount financed, total interest paid, and total amount paid. The TIL Disclosure also contains information concerning the amount of the monthly payments associated with the loan.

21. A loan’s APR is not the same as the loan’s interest rate. The APR also includes prepaid finance charges, such as points, loan origination fees, mortgage broker fees, and underwriting fees. The more prepaid finance charges associated with a loan the higher the APR. Therefore, the APR is always going to be higher than the interest rate, unless there is no prepaid finance charges associated with the loan.

22. The interest rate on an ARM is typically calculated by adding a margin to an index such as the London Interbank Offered Rate (“LIBOR”). If the margin is four percentage points and the index is 6.00%, the interest rate on the mortgage will be

10.00%. In this example, 10.00% would be the fully-indexed interest rate as that interest rate is the rate that is calculated by using the formula set forth in the ARM's note. Most ARMs have a maximum interest rate that can be charged and limitations upon the amount of the periodic increases of the interest rate. Many ARMs have an initial interest rate commonly called a "teaser rate," that is fixed for two or three years at an interest rate below the fully-indexed rate.

23. The calculation of an APR on an ARM loan is therefore more complicated. If the ARM has a teaser rate, a correctly calculated APR reflects the eventual adjustment of the interest rate. For example, if the teaser rate is 5.5% that is fixed for two years and the fully-indexed rate at the time that the borrower signs the ARM is 8.5%, the APR will be calculated based upon the teaser rate for the first two years and the fully-indexed interest rate over the remaining term of the loan. The result is that the APR on an ARM with a teaser rate will be substantially higher than the teaser rate. Therefore, the APR on the TIL Disclosure will be substantially higher than the interest rate disclosed on the GFE.

24. The TIL Disclosure also will show the adjustment in the interest rate in the payment schedule. For example, the TIL Disclosure for a 2/28 ARM will show the initial payment amount for the first twenty-four (24) payments on the loan. If the initial rate is lower than the fully-indexed rate, the TIL Disclosure will disclose the amount of the new payment at the fully-indexed rate. The purpose of this portion of the TIL Disclosure is to disclose to borrowers an estimate of the potential payment increase so that borrowers can make an informed decision whether to complete the loan transaction.

C. ADVANTAGE's 2004 Consent Agreement.

25. On June 2, 2004, the DEPARTMENT and ADVANTAGE entered into a Consent Agreement pertaining to issues relating to ADVANTAGE's 2002, 2003, and

2004 Renewal Applications to the DEPARTMENT. As part of the Consent Agreement, ADVANTAGE agreed to notify the DEPARTMENT ten (10) days prior to opening any branch office located in Nebraska.

26. During the investigation that led to the Consent Agreement, the DEPARTMENT learned that ADVANTAGE had entered into an agency agreement with a corporation in which LAW is the sole shareholder to operate the Cotner Branch of ADVANTAGE. Pursuant to this arrangement, LAW's corporation was paid the commissions from the title companies. A percentage of such fees was then paid to ADVANTAGE. LAW and the responsible loan originator would split the remainder of the fee.

27. The DEPARTMENT determined that this arrangement violated the Act. As part of the Consent Agreement, ADVANTAGE agreed to either (a) cease doing business with all individuals working at the Cotner Branch; (b) hire such individuals as exclusive employees of ADVANTAGE; or (c) enter into exclusive written independent contractor agreements with each of such individuals.

28. In July 2004, ADVANTAGE provided the DEPARTMENT with copies of Loan Production Agent Agreements ("LPAA") with the individuals located at the Cotner Branch including LAW, Jason Svoboda, Ed Sewell, and Dana Douglas. Each agreement submitted to the DEPARTMENT was identical in all respects.

29. Paragraph 2.1 of the LPAA stated as follows:

Subject to the provisions of Section 2.2 hereof, (ADVANTAGE) hereby appoints Agent, and Agent hereby accepts appointment, for purposes of engaging in mortgage lending and banking services. Agent is the only agent authorized to act on behalf of (ADVANTAGE) hereunder.

30. Paragraph 2.2 of the LPAA stated as follows:

Agent shall exclusively market and sell the Services of (ADVANTAGE), and Agent will not enter into another loan production agreement during

the term of this appointment. The parties acknowledge and agree that this Agreement is intended to comply with all provisions of the Nebraska Mortgage Bankers Registration and Licensing Act, Nebraska Rev. Stat. § 45-701, et seq. (Revised 1998), as amended (the "Act"), and that Agent will act exclusively for (ADVANTAGE) as an agent in the performance of all duties and obligations hereunder.

31. Paragraph 2.3 of the LPAA stated as follows:

Agent shall be paid commissions on all Services sold by Agent. Commissions are Fifty Percent (50%) of all front and back loan fees charged by Agent. Commissions shall be paid to Agent at the end of each month. Prior to such monthly payout, (ADVANTAGE), in its sole discretion, may allow Agent to draw against the commissions earned by Agent. The commission rates may not be reduced without Agent's prior written consent. Prior to Agent's sale of any additional Services on behalf of (ADVANTAGE) for which no commission rate is set, Agent and (ADVANTAGE) shall mutually agree upon a commission schedule particular to that Service, which schedule shall be considered an amendment to this Agreement.

32. Paragraph 2.6 of the LPAA stated as follows:

Agent agrees that all loan funding shall be paid to (ADVANTAGE) and (ADVANTAGE) will then payout commissions to Agent.

33. The LPAA made it clear that the agents were exclusive agents of ADVANTAGE, that the title companies would pay the commission checks to ADVANTAGE, and that ADVANTAGE would pay commissions to the agents. The LPAA did not provide for any further involvement by LAW's corporation.

34. During its investigation into this matter, the DEPARTMENT learned that ADVANTAGE made no changes in its operations as a result of the LPAA. LAW's corporation continued to collect the fees from the title company and pay a percentage to ADVANTAGE. LAW's corporation continued to pay its agents and the agents received IRS Form 1099's from LAW's corporation, not ADVANTAGE. This was contrary to the representations that ADVANTAGE had made to the DEPARTMENT by submitting the LPAA. It appears that the LPAA's were executed and submitted to the DEPARTMENT with

the intent of deceiving the DEPARTMENT that the branch structure at ADVANTAGE had changed.

D. AJ's allegations.

35. References to customers and former employees of ADVANTAGE will be by way of initials in order to protect the privacy of such customers and former employees. ADVANTAGE is aware or should be aware of the identity of such customers and former employees. If ADVANTAGE is unable to ascertain the identity of these customers or former employees, the DEPARTMENT will provide a list of these customers and former employees to ADVANTAGE upon receipt of a written request.

36. On November 21, 2005, and February 9, 2006, representatives of the DEPARTMENT met with AJ, a former customer and employee of ADVANTAGE. During these meetings, AJ made serious allegations regarding ADVANTAGE and about a loan originator named Jason Svoboda ("SVOBODA"). Specifically, AJ alleged as follows:

- a. SVOBODA was a convicted felon and started working at ADVANTAGE through a work-release program.
- b. ADVANTAGE, GARY LEVINE, MARCEE LEVINE, and GOLDBERG were aware of SVOBODA's criminal record.
- c. AJ was employed as SVOBODA's assistant at ADVANTAGE's Council Bluffs, Iowa Branch location; however, SVOBODA had a fully-functioning office in his house in Lincoln, Nebraska, and did the majority of work from that location.
- d. SVOBODA arranged mortgage loans secured by real property in Nebraska and Iowa.
- e. SVOBODA had instructed AJ to create fake documents in order for customers to qualify for mortgage loans.
- f. SVOBODA forged the borrowers' signatures on various documents.

- g. SVOBODA did his own processing for loans and would create the initial disclosures including the TIL Disclosure, and the GFE.
- h. SVOBODA would meet with potential customers and obtain signatures on the initial disclosures, but would not leave copies of the disclosures with the customers.
- i. SVOBODA used Missouri River Title Company (“MRTC”) to close many of the loans that he was originating. Several MRTC employees allowed SVOBODA to close his own loans without a representative of MRTC present at the closing. A MRTC employee would then notarize the documents which required notarization despite the fact that the notary was not present at the closing.
- j. SVOBODA would not explain to the customer the amount of fees associated with the loan transaction and in some cases removed documents containing the amount of the fees from documents prepared for the closing. The net result was that customers had no idea of the amount of the fees that they had been charged for the transaction. In many cases the fees were unreasonable and unnecessary.
- k. SVOBODA would brag to other loan originators about the fees that he was able to obtain. On at least one occasion, SVOBODA referred to a transaction as a “home run” because of the fees that he made on the transaction.
- l. ADVANTAGE held SVOBODA out as the example loan originator that other loan originators should emulate.
- m. ADVANTAGE and SVOBODA split the fees that were associated with each transaction.
- n. AJ had informed GOLDBERG that SVOBODA was committing fraud, but ADVANTAGE had failed to take any action regarding such information.

II. DEPARTMENT’S INVESTIGATION

37. The DEPARTMENT has conducted an exhaustive investigation into the actions of ADVANTAGE and SVOBODA, including reviewing files and interviewing numerous customers. The DEPARTMENT’s investigation uncovered a substantial number of serious, and in many cases willful, violations of the Act.

A. SVOBODA's Background.

38. On September 30, 1994, SVOBODA was convicted in the District Court of Platte County, Nebraska, of possession of a controlled substance with intent to deliver which is a felony. SVOBODA was sentenced to 30-48 months in prison. He was released from prison on December 24, 1997.

39. SVOBODA then began working as a finance manager at Rhoden Auto Center ("RHODEN"). Ultimately, RHODEN discovered that SVOBODA had stolen money from the company. RHODEN contacted law enforcement which led to SVOBODA's arrest and to criminal charges. The case was filed in 2002 and is captioned *State of Nebraska v. Jason J. Svoboda* in the Lancaster County District Court ("Lancaster Court"), file number CR02-454.

40. The Lancaster Court file contained allegations that RHODEN had sold a vehicle to another dealership. The vehicle was transferred to the other dealership. The other dealership wrote a check for \$17,200.00 payable to RHODEN. SVOBODA endorsed the check as general manager and deposited the check into his personal bank account.

41. SVOBODA was charged with Theft by Deception, a Class III Felony. SVOBODA was convicted of said crime. On May 28, 2003, SVOBODA was sentenced to 24-48 months in prison. SVOBODA was released from prison on July 28, 2004.

42. SVOBODA also co-owned two properties in Lincoln, Nebraska, with his wife. One property was located at 4030 Eagle Ridge Road, Lincoln, Nebraska ("Eagle Ridge Property"). The other property was located at 1950 Marlene Drive, Lincoln, Nebraska ("Marlene Drive Property").

43. SVOBODA and his wife defaulted on a mortgage loan secured by the Eagle Ridge Property. On November 6, 2002, Steffi Swanson, Attorney-at-Law, the successor trustee (“Swanson”), executed a trustee’s deed on November 6, 2002, pursuant to Neb. Rev. Stat. § 76-1010 (Cum. Supp. 2006) which was recorded as Instrument Number 2002-78192 in the Lancaster County Register of Deeds Office. SVOBODA therefore lost the Eagle Ridge Property to foreclosure.

44. SVOBODA and his wife also defaulted on a mortgage loan secured by the Marlene Drive Property. Eric Lindquist, Attorney-at-Law, the successor trustee, executed a trustee’s deed on October 1, 2003, pursuant to Neb. Rev. Stat. § 76-1010 (Cum. Supp. 2006) which was recorded as Instrument Number 2003-112875 in the Register of Deeds Office. SVOBODA therefore lost the Marlene Drive Property to foreclosure.

45. SVOBODA and his wife filed for Chapter 7 Bankruptcy in the United States Bankruptcy Court for the District of Nebraska on May 7, 2003. According to the Schedule I filed with the Bankruptcy Court, SVOBODA’s estimated monthly income was \$4,000.00. Furthermore, SVOBODA disclosed in the Schedules that he earned \$6,200.00 from Champion Mitsubishi in 2003; \$13,400.00 from Genettis Nationwide Delivery & Showcase Pontiac in 2002; and \$60,000.00 from RHODEN in 2001. SVOBODA’s wife disclosed minimal income in those years, primarily from social security surviving dependent benefits.

46. SVOBODA began working for ADVANTAGE’s Cotner Branch in late January or early February 2004, through a work release program offered at the state prison.

47. SVOBODA continued to work at the Cotner Branch until October 2004 when LAW discovered problems with SVOBODA’s loan files and terminated him. LAW also

discovered that SVOBODA was preparing false documents in connection with a personal mortgage loan that SVOBODA was attempting to obtain to purchase a new house.

48. After the separation between LAW and ADVANTAGE, SVOBODA was hired as an employee by ADVANTAGE and started working from its Council Bluffs Branch.

49. In 2005, ADVANTAGE allowed SVOBODA to begin working at his home rather than requiring him to work at either the Omaha or Council Bluffs Branch locations. ADVANTAGE provided SVOBODA with all of the software necessary to originate loans at his home office. In addition, SVOBODA had access to ADVANTAGE's email system from his home office and had a separate telephone line for a fax machine. SVOBODA made telephone calls to customers, lenders, appraisers, and other service providers from his home office and met with customers at his home office. SVOBODA ultimately hired AS, without ADVANTAGE's knowledge, as an assistant to work with him at his home office. Moreover, SVOBODA held out his home office as a branch of ADVANTAGE in his dealings with lenders. Eventually, ADVANTAGE reassigned SVOBODA's office at the Council Bluffs Branch to another loan originator as SVOBODA was doing his work from home rather than from the office.

50. While employed by ADVANTAGE, SVOBODA originated loans for at least seventy-two (72) different loan customers, fifty-six (56) of whom are Nebraska residents. For several customers, SVOBODA originated multiple loans.

51. SVOBODA originated over \$11 million in mortgage loans at ADVANTAGE between February 2004 and January 2006. ADVANTAGE collected over \$550,000.00 in fees from these loans. After payment of expenses, the fees were split between SVOBODA, ADVANTAGE, and LAW for transactions occurring prior to and during

October 2004, and between ADVANTAGE and SVOBODA for transactions occurring after October 2004.

52. In January 2006, ADVANTAGE was contacted by Decision One Mortgage Company, LLC (“DECISION ONE”). DECISION ONE informed ADVANTAGE that it had discovered that SVOBODA had submitted fraudulent documents in three (3) pending loan files. DECISION ONE threatened to terminate its relationship with ADVANTAGE if SVOBODA continued to originate loans for ADVANTAGE. On January 17, 2006, ADVANTAGE terminated SVOBODA’s employment rather than lose its relationship with DECISION ONE. At no time did ADVANTAGE, GOLDBERG, GARY LEVINE, or MARCEE LEVINE notify the DEPARTMENT of any problems it had discovered with SVOBODA.

53. After ADVANTAGE’s termination, SVOBODA continued to work as a loan originator through a relationship with another entity engaging in mortgage banking business in Nebraska.

54. On April 20, 2006, SVOBODA was arrested on charges related to a mortgage loan that SVOBODA obtained to purchase real estate in Lincoln, Nebraska. On April 21, 2006, the DEPARTMENT issued an Order to Cease and Desist to SVOBODA ordering him to cease employment in the mortgage banking industry in Nebraska. SVOBODA has subsequently been charged with additional criminal offenses in Lancaster and Douglas County, Nebraska. All three (3) court cases are currently pending.

B. ADVANTAGE’s Knowledge of SVOBODA’s Criminal History.

55. SVOBODA began working for ADVANTAGE’s Cotner Branch in late January or early February 2004, through a work release program offered at the state prison. LAW signed a verification dated February 17, 2004, verifying to the Department

of Correctional Services that SVOBODA had been hired as a loan originator for ADVANTAGE. Therefore, LAW, ADVANTAGE's agent, clearly knew that SVOBODA had a criminal history as the Department of Correctional Services could only require a verification of employment for persons with criminal records.

56. An independent contractor agreement was entered into between SVOBODA and ADVANTAGE on July 8, 2004, and a copy was forwarded to the DEPARTMENT pursuant to the Consent Agreement. Paragraph 2.10 of the LPAA stated as follows:

Agent warrants and represents that Agent has not been convicted of, plead guilty to, or found guilty after a plea of nolo contendere to (i) a misdemeanor under any state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, financial institution business, or installment loan business, or (ii) any felony under state or federal law.

57. At the time the LPAA was submitted to the DEPARTMENT, SVOBODA was still incarcerated and was working at ADVANTAGE through a work-release program at the state prison, a fact that was known to ADVANTAGE.

58. SVOBODA continued to work at the Cotner Branch until October 2004 when LAW discovered problems with SVOBODA's loan files and terminated him.

59. On October 27, 2004, LAW sent an e-mail to GARY LEVINE and GOLDBERG warning them about her history with SVOBODA. Specifically, LAW's e-mail stated:

I think you should know that I fired Jason Svoboda...for numerous reason, he was asking the processing staff to forge documents so he could qualify for a home loan, that he didn't qualify for, he was also asking one of the them to pose as the president for a VOE....and the I found out that he had several felony accounts against him for embezzlement and theft...the processing staff was uncomfortable doing loans for him...because of always operating in the grey area and they didn't want to do anything wrong....they are very good...when all three of them came to me...I was concerned enough to let him go...He also had about 1,100 in appraisals until the collections, he tried to strike a deal with the appraisal

to charge 11 future clients \$400 per appraisal and they would take the \$100 dollar over charge to make up for the appraisal owed. This wasn't fair to them or the future clients be charged more to pay for his collections.

...
he [SVOBODA] was going to go work for Ed [Ed Sewell] but couldn't get bonded...because of the felonies.

[spelling, capitalization, grammar and punctuation as in original]

60. On November 2, 2004, LAW sent another e-mail to GOLDBERG in which she stated:

Here is a tip...banking regulation...regarding the hiring of anyone with a felony conviction. Section 45-7-07 I just found this out...can go to the web site at www.ndbf.org and go right to it..either a direct employee or or a 1099 or on the side employee.....of the banker with the license or its branch affiliates. Administrative action will be taken, with fines and possible license revocation...if someone knowingly hires a person with this record.

[spelling, capitalization, grammar and punctuation as in original]

61. On November 1, 2004, SVOBODA submitted a document entitled "Application for Employment" to ADVANTAGE. The form asks, "Have you been convicted of a crime in the last 7 years?" SVOBODA answered "Yes." The form then states "If yes, please explain (a conviction will not automatically bar employment)." SVOBODA responded "Theft By deception."

62. Findings of Fact # 55-61 clearly demonstrate that ADVANTAGE knew that SVOBODA had a recent criminal record; knew that SVOBODA had recently been released from prison; knew that LAW was alleging serious fraudulent activity against SVOBODA; and knew that hiring individuals with felony convictions was grounds for revocation of its license. In spite of all of these issues, ADVANTAGE decided to overrule LAW's decision to terminate SVOBODA and retained him as a loan originator at its Council Bluffs Branch.

63. GOLDBERG, GARY LEVINE, MARCEE LEVINE, and SCOTT LEVINE had knowledge of the issues set forth in Findings of Fact #'s 55-61 and actively participated in the decision to retain SVOBODA after his termination by LAW.

C. SVOBODA's Mortgage Loan Transaction.

64. On January 20, 2005, SVOBODA and his wife signed a purchase agreement to purchase 6817 Ridge Point Road, Lincoln, Nebraska ("Ridge Property"), from Mann Customs, Inc., a Lincoln, Nebraska homebuilder, for \$428,000.00. SVOBODA's agreement to purchase this property occurred only six (6) months after his release from prison.

65. On December 31, 2004, SVOBODA completed a Form 1003, Uniform Residential Loan Application ("Form 1003") for the purchase of the Ridge Property. According to the Form 1003, SVOBODA would obtain the proceeds for the down payment from "Equity on Sold Property." He also stated on the Form 1003 that he had worked for ADVANTAGE for 2 years, 3 months, or since October 2002. The Form 1003 also asks if the applicant has had any property foreclosed upon in the past seven (7) years. SVOBODA checked "No," despite the fact that he had lost two properties to foreclosure. Form 1003 was signed by SVOBODA as the borrower.

66. ADVANTAGE acted as the mortgage broker in SVOBODA's transaction. The Form 1003 contains GARY LEVINE's signature as the "Interviewer." ADVANTAGE submitted the loan to Argent Mortgage Company ("ARGENT") for approval. On January 13, 2005, ADVANTAGE faxed a "Loan Submission Transmittal" to ARGENT. This document stated that SVOBODA and GARY LEVINE were the broker contacts for this loan. In addition, GARY LEVINE's e-mail address was given to ARGENT as the contact information.

67. SVOBODA's statements on his Form 1003 were false. As stated in Findings of Fact #'s 46 and 55, SVOBODA did not begin working at ADVANTAGE until early 2004. Therefore, SVOBODA did not receive any income from ADVANTAGE in 2002 or 2003. As stated in Findings of Fact #'s 42-44, SVOBODA's properties had been the subject of two (2) foreclosure actions. SVOBODA therefore made false and misleading statements on the Form 1003 to deceive ARGENT as to his financial condition and financial history.

68. In order to obtain approval for the loan, ARGENT required SVOBODA to submit proof of his 2003 and 2004 income. As proof of his 2003 income, ADVANTAGE submitted a Form 1040 purportedly for SVOBODA and his wife for 2003. This income tax return showed that SVOBODA had earned \$122,146.00 from ADVANTAGE in 2003. The income tax returns reflected no income from any other source in 2003. The tax return also showed that SVOBODA owed \$17,069.00 in income taxes for 2003. The tax return was dated April 2, 2004, and was signed by SVOBODA and a signature purporting to be that of his wife. The tax return was purportedly prepared by Laurie Reinquest, Lincoln, Nebraska.

69. To demonstrate SVOBODA's income for 2004, ADVANTAGE submitted copies of bank statements for an account at Pinnacle Bank. The statements showed that SVOBODA was the sole owner of the account. In total, eleven (11) statements dated January 11, 2005; December 9, 2004; November 9, 2004; October 12, 2004; September 10, 2004; August 10, 2004; July 12, 2004; June 9, 2004; May 11, 2004; April 9, 2004; and March 9, 2004 were submitted to ARGENT. ARGENT relied upon the deposits listed in the bank statements to estimate SVOBODA's income.

70. The tax returns were blatantly fraudulent. As stated in Finding of Fact #41, SVOBODA was in prison beginning in May 2003. Furthermore, as stated in Finding of Fact #45, SVOBODA disclosed no income from ADVANTAGE in his bankruptcy filing. In addition, as stated in Findings of Fact #'s 46 and 55, SVOBODA did not work for ADVANTAGE until February 17, 2004. Moreover, the tax return showed that SVOBODA owed taxes, yet his bank statement for April 2004 does not show any payment of the taxes. Instead, SVOBODA's March 9, 2004 statement shows that SVOBODA received a direct deposit from the US Treasury for a "Tax Refund" in the amount of \$3,972.00.

71. Furthermore, the Lincoln Police Department has conducted a search for the preparer of the tax returns. There is a tax preparer located at the address on the tax return. However, that business has never had an employee named Laurie Reinquist, and SVOBODA has never been a customer of that business. Therefore, SVOBODA forged a preparer's signature on the tax return to give it a more authentic appearance.

72. The bank statements had also been altered. The account was actually owned by SVOBODA, his wife, and a minor child. The bank statements had been addressed to all three individuals. SVOBODA had altered the bank statements to remove his wife's name and the name of the minor child.

73. ARGENT approved SVOBODA's loan transaction based upon the fraudulent information that it received from ADVANTAGE.

D. ADVANTAGE's Participation in SVOBODA's Transaction.

74. As stated in Finding of Fact #66 above, GARY LEVINE was listed on documents in the loan file as a loan originator responsible for SVOBODA's file.

75. On January 28, 2005, SVOBODA signed a promissory note payable to “Gary Levine/Advantage Mortgage Service” in the amount of \$22,000.00. ADVANTAGE wrote a check payable to SVOBODA. The check contains a signature which appears to be that of GARY LEVINE.

76. The purpose of the loan from ADVANTAGE to SVOBODA was to provide SVOBODA with the necessary funds for the down payment on the house he was purchasing. Therefore, contrary to SVOBODA’s statement on the Form 1003, the funds for the down payment actually came from a loan and not from the sale of property. Furthermore, the real facts concerning the source of the down payment were never disclosed to ARGENT.

77. SVOBODA could not have obtained the loan from ARGENT without making the required down payment. Therefore, ADVANTAGE’s participation in the scheme by loaning the funds to SVOBODA for the down payment was essential for SVOBODA to obtain the mortgage loan.

78. As stated in Finding of Fact #59, ADVANTAGE was warned by LAW that she had caught SVOBODA falsifying documents to obtain a personal mortgage loan. Despite such warning, ADVANTAGE took no steps to restrict SVOBODA from working on his own loan and took absolutely no precautions to prevent SVOBODA from submitting fraudulent documents to ARGENT. ADVANTAGE and GARY LEVINE also assisted SVOBODA to obtain a fraudulent mortgage loan by loaning the money for a down payment to SVOBODA and not disclosing such fact to ARGENT.

79. The facts listed in Finding of Fact #'s 73-77 make it clear that ADVANTAGE, GARY LEVINE, MARCEE LEVINE, and GOLDBERG knowingly allowed SVOBODA to submit a fraudulent loan application to ARGENT through ADVANTAGE for his

personal residence. Furthermore, ADVANTAGE and GARY LEVINE were active participants in such fraud by making an undisclosed loan to SVOBODA for the down payment.

E. SVOBODA's Branch Office.

80. After his termination by LAW, SVOBODA worked from ADVANTAGE's Council Bluffs Branch location. ADVANTAGE bought SVOBODA a gas credit card to pay for SVOBODA's commute from his home in Lincoln to Council Bluffs.

81. In 2005, SVOBODA made a number of requests to GARY LEVINE to allow him to work from his home rather than make the commute from Lincoln to Council Bluffs. ADVANTAGE initially allowed SVOBODA to do some of the work from his home; however, it eventually allowed SVOBODA to work entirely from his Lincoln home. Ultimately as set forth in Finding of Fact #49, ADVANTAGE reassigned SVOBODA's office at the Council Bluffs Branch to another loan originator as SVOBODA worked exclusively from his home.

82. ADVANTAGE assisted SVOBODA in establishing an office at SVOBODA's Lincoln home. ADVANTAGE allowed SVOBODA to install the loan origination software used by ADVANTAGE on SVOBODA's computer at his home office. Furthermore, ADVANTAGE allowed SVOBODA to have access to an ADVANTAGE email account from his home office. SVOBODA also had a facsimile machine with a separate telephone line dedicated to such machine.

83. SVOBODA held out his home as a branch of ADVANTAGE. Specifically, his fax machine printed a header at the top of each page which stated "Advantage Mortgage Jason." Another example of SVOBODA's representation as to ADVANTAGE's branches occurred in connection with a loan for customer JM.

SVOBODA sent a verification of employment to JM's employer. At the bottom of the form, SVOBODA wrote, "Please fax back to me at the Lincoln office at 402-421-0978 or call me at 402-421-0964." This fax was sent on August 25, 2005.

84. SVOBODA met with customers at his home office and conducted closings there. For example, SVOBODA met with customers SV & PV at his home office to discuss obtaining a loan. SVOBODA also handled closings at his home office for several customers including MD and SV & PV.

85. SVOBODA also hired an assistant, AS, who assisted SVOBODA at his home office.

86. SVOBODA was engaging in mortgage banking at his residence in Lincoln. SVOBODA had all of the necessary software to originate and process loans. He solicited potential borrowers, created documents, faxed documents, met with customers, and handled closings at his residence. Furthermore, ADVANTAGE had no other office assigned for SVOBODA's use. Moreover, SVOBODA was holding his home office out as an office of ADVANTAGE and had hired an employee who worked there as well. SVOBODA was conducting mortgage banking business on behalf of ADVANTAGE at his home office and as such it was a branch office of ADVANTAGE.

F. SVOBODA's and ADVANTAGE's Deceptive Sale Practices.

87. ADVANTAGE employs individuals as "loan processors" who are responsible for gathering the required documentation, preparing the required disclosures, and forwarding required documents to the lenders. However, ADVANTAGE did not require SVOBODA to use the loan processors. Instead it allowed SVOBODA to process his own loans. Therefore, SVOBODA handled the processing duties for a large majority of the

loans that he worked, and appears to have been the exclusive processor for the loans originated at his home office.

88. Virtually all of the TIL Disclosures prepared by ADVANTAGE for loans originated by SVOBODA disclosed an APR that was equal to the interest rate disclosed on the GFE. Such TIL Disclosures failed to account for the substantial prepaid finance charges associated with the loans ADVANTAGE was originating. Furthermore, a large majority of the loans SVOBODA was promoting were ARMs with a teaser rate. The TIL Disclosures failed to account for the adjustment in the interest rate that would occur when the interest rate adjusted to the ARM's fully-indexed rate. The result is that the APRs listed on the TIL Disclosures were grossly understated. The TIL Disclosures prepared by SVOBODA also did not contain an estimated monthly payment after the interest rate was projected to adjust to the fully-indexed interest rate.

89. For example, customers CM & EH submitted a Form 1003 to ADVANTAGE on December 12, 2005. According to the Form 1003, CM & EH were applying for a 2/28 ARM loan. CM & EH also signed a GFE dated December 12, 2005. The GFE indicated that the borrowers were receiving a 30-year mortgage for \$125,000.00 at an interest rate of 8.75%. The GFE also disclosed significant prepaid finance charges including a \$2,500.00 loan origination fee, a \$1,250.00 mortgage broker fee, a \$499.00 processing fee, an \$890.00 underwriting fee, a \$200.00 closing fee, and \$243.06 in prepaid interest for a total of \$5,582.06 in prepaid finance charges. The TIL Disclosure indicated that the amount financed was \$125,000.00 with an APR of 8.750%. The Form 1003, GFE, and TIL Disclosure all have what appears to be the borrowers' signatures and the date December 12, 2005.

90. The fully-indexed rate for CM & EH's loan was 5.50 percentage points plus the six-month LIBOR average which for December 2005 was 4.6901%. Therefore, CM & EH's fully-indexed rate was 10.190%. Since the initial interest rate for CM & EH was less than the fully-indexed rate, the APR is calculated with the assumption that the interest will adjust to the fully-indexed rate after the two-year fixed rate portion of the loan expires.

91. The actual APR for CM & EH's loan was 10.42%, significantly more than the 8.750% listed on the TIL Disclosure.

92. The software installed on both SVOBODA's computer, as well as the computers of ADVANTAGE's loan processors, contained a program designed to calculate the APR based upon the amount of the pre-paid finance charges and the nature of the adjustable rate. SVOBODA or the loan processor apparently either inserted false information into the software package or deleted the APR that the software calculated and replaced it with the interest rate. In either event, SVOBODA or the loan processor deliberately chose to create TIL Disclosures with grossly understated APRs. This allowed SVOBODA, on behalf of ADVANTAGE, to promote mortgage loans at his initial meeting with borrowers without having to explain why the APR on the TIL Disclosure was substantially higher than the interest rate on the GFE. It also allowed SVOBODA to promote the monthly payment without having to show the borrowers a document which disclosed the increase in the monthly payment when the interest rate on the loan increased to the fully-indexed rate. The false TIL Disclosures deprived the potential borrowers of crucial information necessary to make an informed decision regarding the loan ADVANTAGE was offering.

93. Virtually all of the initial GFEs prepared for loans SVOBODA originated failed to disclose a yield spread. A mortgage broker must estimate a yield spread on the GFE if it intends to receive a yield spread as part of its compensation. ADVANTAGE's practice was to obtain a yield spread on the loans that SVOBODA was originating on its behalf which is evidenced by the fact that a yield spread was collected on all but two of the loans he originated. Therefore, ADVANTAGE was required to disclose an estimate of the yield spread on the GFE. Not listing the yield spread on the GFE allowed SVOBODA to conceal the fact that the lender was also paying ADVANTAGE for originating the loan. It also allowed SVOBODA to avoid disclosing to the borrowers that the reason that the lender was paying ADVANTAGE a yield spread was that the loan had a higher interest rate than the market rate than at which the lender was willing to make the loan.

94. The initial GFEs prepared by SVOBODA frequently understated the amount of the mortgage broker fees that ADVANTAGE ultimately charged the borrowers. In several cases, the mortgage broker fees were understated by over a thousand dollars. SVOBODA underestimated the fees on the GFE for the purpose of deceiving the customers regarding the fees so that the potential customers would agree to the terms of the loan.

95. SVOBODA would have an initial meeting with the customers at either his home office or at the customer's residence. SVOBODA typically only brought one set of disclosure documents, including the GFE and the TIL Disclosure to the meeting. SVOBODA would obtain the customer's signatures on the documents, but would not explain the content of the documents. In addition, since he only brought one set of documents to the meeting, SVOBODA would not leave a copy of such documents with

the borrower. Obtaining a customer's signature on a document, but not leaving a copy with the borrower, does not constitute delivery.

96. SVOBODA deliberately chose to not leave copies of the GFE, TIL Disclosure, and other initial disclosures with the borrowers. By not leaving copies of the GFE, TIL Disclosure, and other initial disclosures with the borrower deprived the borrowers of the opportunity to review the documents after their meetings with SVOBODA. It also deprived the borrowers of the opportunity to compare such documents to the closing documents, including the final GFE, final TIL Disclosure, and the HUD-1. Had the borrowers had the actual initial disclosure documents, they may have discovered information or questions about the documents that would have led the borrowers to discontinue their loan transaction with ADVANTAGE.

97. On numerous occasions, SVOBODA would instruct borrowers to not date the initial disclosures. SVOBODA would then back date the disclosures to give the appearance that the disclosures had been made within three days of accepting an application as required by law.

98. On at least one occasion, SVOBODA misrepresented that a fee on the GFE was paid to the lender for making a loan on "out-of-state" property when in reality the fee was payable to ADVANTAGE.

99. SVOBODA frequently misrepresented the terms of the loans that ADVANTAGE was originating, including, but not limited to, the interest rate, prepayment penalties, and monthly payment amount. SVOBODA's practice of not leaving a copy of the initial disclosures with the borrowers deprived the borrowers of the information necessary to detect the misrepresentations.

100. On a number of occasions, SVOBODA failed to inform customers that they would have to pay a prepayment penalty on their current mortgage if they obtained a new mortgage through ADVANTAGE. Furthermore, on at least one occasion, SVOBODA falsely represented to potential customers that the prepayment penalty on their current loan was waived if they obtained a loan through ADVANTAGE.

101. An appraisal is typically required before a lender will make a loan on a certain property. On multiple occasions, SVOBODA arranged for appraisers to prepare inflated appraisal reports. The inflated appraisal reports were necessary in order for the borrowers to qualify for the loans that had been promised. If the borrowers would not qualify for the loan, ADVANTAGE would not collect any fees for the transaction.

102. ADVANTAGE frequently used MRTC to handle the loan closings. ADVANTAGE and MRTC allowed SVOBODA to handle his own closings, rather than having the closings at the title company. SVOBODA would pick up the closing documents from MRTC and meet the clients either at his home office or at their residence. No representative of MRTC would be at the closing. SVOBODA would then obtain the customers' signatures on the closing documents including the promissory note, the Deed of Trust, the HUD-1, and all other documents required by MRTC and/or the lender. SVOBODA would obtain a copy of the borrowers' driver's licenses and return the signed documents to MRTC. Tabitha Wood ("WOOD"), Anita Lewis ("LEWIS"), or Rachel Smith ("SMITH"), MRTC employees, who were Iowa notaries, would then alter the acknowledgement to indicate that the documents were signed in Pottawattamie County, Iowa, and then notarize the borrowers' signatures even though they had not been present at the closing. Such notarizations were therefore false.

103. While at closings with his customers, SVOBODA would not explain the documents that the borrower was signing. SVOBODA would not explain the amount of the fees that ADVANTAGE was receiving as compensation for origination of the loan. On several occasions, borrowers asked specific questions about the fees that appeared on the HUD-1. SVOBODA represented that the fees would be a credit on their income tax return and that the borrowers would receive the fees back as a part of their tax refund. Such statement is grossly false as there is no tax credit for mortgage broker fees or any other fee associated with closing a loan transaction.

104. On more than one occasion, SVOBODA removed certain documents from the closing document packets. The documents that were removed from the closing document packets were documents that disclosed the fees, including the second page of the HUD-1. The removal of these documents made it extremely difficult for the borrowers to ascertain the amount of the fees that had been charged for their transaction.

105. Not having a representative of the title company present at the closing deprived the borrowers of an independent party at the closing who would review the terms of the loan with the borrower including the itemization of the fees listed on the HUD-1. Had a title company representative been present at the closing, SVOBODA would not have been able to remove documents from the closing packets without being discovered. Likewise, borrowers would have had accurate information concerning the fees that ADVANTAGE charged them. Moreover, SVOBODA could not falsely state that the fees would be refunded as a tax credit if the title company representative had been present. SVOBODA's actions in closing the loan were specifically designed to insure that borrowers would not learn accurate information about their loan which could have prompted them to refuse to close the transaction.

106. During the time that AJ worked for ADVANTAGE, SVOBODA sent him to meet with customers both to obtain signatures on the initial disclosures and to close the loan. AJ, at SVOBODA's instruction, would only take one set of initial disclosures, including the GFE and TIL Disclosure. AJ would obtain the borrowers' signatures on the forms, but since he did not have an extra copy of the documents he could not leave a set of documents with the borrowers. Likewise, at closing time, AJ would obtain the borrowers' signatures on the closing documents and return them to SVOBODA who would make arrangements with LEWIS, WOOD, or SMITH to have the documents notarized. On a number of occasions, SVOBODA would instruct AJ to return the pen that the borrowers' used. SVOBODA would then use that pen to forge customers' signatures on the documents that had been previously removed from the closing packets.

107. On at least one occasion, SVOBODA picked up a check payable to the borrower from MRTC. This check represented the excess loan proceeds after paying closing costs and consolidating other debts. The borrower had told SVOBODA that he did not want to receive the cash from the closing and that the excess funds should be used to reduce the principal balance on his loan. SVOBODA instead forged the customer's signature on the check and deposited it into his personal bank account without the customer's permission.

108. The DEPARTMENT has also received a complaint from customers JW & AW which made allegations of similar deceptive practices engaged in by another loan originator at ADVANTAGE. Therefore, it appears that ADVANTAGE's practices were not confined to loan originator SVOBODA.

G. GemCap Equity System Spreadsheet.

109. One of the sales techniques employed by SVOBODA to entice customers to obtain loans through ADVANTAGE was the use of a “Gem Cap Equity Building System” (“Gem Cap”) spreadsheet. This spreadsheet is made available to mortgage brokers through a company called Gem Cap Equity Management, LLC, which appears to be operating from Toledo, Ohio. The spreadsheet is promoting a bi-weekly payment system.

110. If a consumer enrolls in a bi-weekly payment program, one-half of the monthly mortgage payment is withdrawn from the consumer’s checking account every two weeks. After one year, twenty-six such withdrawals have occurred which results in the borrower making an extra loan payment each year. In the long run this leads to an accelerated repayment schedule and a lower total cost for the consumer. However, until the loan is paid off the customer does not realize any savings. Therefore the consumer will not save any money for perhaps as many as twenty to twenty-five years. In fact, the consumer has to come up with the money to make an extra mortgage payment each year until the loan is paid in full. Under the program, the consumer will make three bi-weekly payments in two different months each year.

111. The Gem Cap spreadsheet illustrates four different payment options. The first option illustrated is the traditional monthly payment plan; the second option illustrated is a bi-weekly plan; the third option is a bi-weekly plan with an additional twenty-five dollars (\$25.00) added to each payment; and the fourth option illustrated is a bi-weekly plan with an additional fifty dollars (\$50.00) added to each payment.

112. At the bottom of the Gem Cap spreadsheet is a separate spreadsheet which compares the four options. This spreadsheet states the total payments under each of the

four options, the total interest paid, the “interest savings” by enrolling in the bi-weekly plans, and the number of payments earlier the loan will be paid in full by enrolling in the program.

113. The Gem Cap spreadsheet contains a row captioned “Net Equivalent Interest Rate” which shows that there is a lower interest rate associated with enrollment in the plan. This is highly deceptive as the interest rate of the underlying note is not changed by enrollment in a bi-weekly payment system.

114. The Gem Cap spreadsheet also contains captioned “Average Yearly Interest Savings.” This figure is highly deceptive as the consumer would not realize any savings until the loan is paid in full which for a thirty-year mortgage could be twenty or twenty-five years in the future and instead would be making an extra mortgage payment each year until such time.

115. In addition to the bi-weekly payment, a consumer enrolling in the plan would be charged a service fee with each payment.

116. At the same time that SVOBODA was using the Gem Cap spreadsheet to encourage people to take loans through ADVANTAGE, he was also telling his customers that they could refinance in two years to avoid the interest rate adjustment on their ARM. The savings associated with a bi-weekly plan occur in the long run. After two years of bi-weekly payments, the amount of interest saved would be nominal and would be outweighed by the monthly service charges associated with enrollment in the plan.

117. The Gem Cap spreadsheet is based upon the assumption that the loan is a fixed rate loan. The Gem Cap spreadsheet is grossly inaccurate when applied to an ARM. An ARM cannot be paid off early by making yearly prepayments. For example, a 2/28 ARM will reamortize after two years and will reamortize every six months thereafter. This

reamortization is based upon the remaining term of the note. Therefore, after two years, the monthly payment is calculated by amortizing the unpaid principal at the new interest rate over a term of twenty-eight years. Six months later, the monthly payment is recalculated by amortizing the unpaid principal balance at the new interest rate over a term of twenty-seven and one-half years. This process will repeat every six months until the end of the original term of the note thirty years after the note is signed.

118. A bi-weekly payment system for a fixed rate loan results in savings in the long run because the loan will pay off early. For an adjustable rate loan, the savings will be associated with lower monthly payments. However, the savings associated with an ARM will be less than the savings associated with a fixed rate mortgage. Therefore, the Gem Cap spreadsheet overstates the amount of savings that can be realized by enrolling an ARM loan in the plan.

119. SVOBODA or AJ would present the Gem Cap spreadsheet to customers at their meetings. SVOBODA would tell customers that their interest rate was lowered by enrolling in the Gem Cap program, that their loan would be paid off years earlier and that they would save a considerable amount of money by enrolling in the program. The purpose of this deception was to convince customers to complete loan transactions with ADVANTAGE, thus resulting in fees for ADVANTAGE and SVOBODA. However, SVOBODA failed to enroll the customers in the Gem Cap plan.

120. The use of the Gem Cap spreadsheet confused and misled consumers. SVOBODA's customers did not understand that bi-weekly did not mean twice monthly; that they would be making an extra mortgage payment each year; that the savings in the Gem Cap spreadsheet would only be realized once the loan was paid-in-full; and that there would be little savings if they refinanced in two years, that the interest rate on the

note was not changed by enrollment in the plan, or that an ARM could not be paid early by enrollment in the plan. Several of SVOBODA's customers have indicated that one of the main reasons that they agreed to the loan was the savings presented in the Gem Cap spreadsheet. In fact, these customers were quite upset when SVOBODA failed to enroll them in the plan.

121. Several other loan originators at ADVANTAGE also promote and/or are still promoting the Gem Cap spreadsheet to customers. Based upon information from another customer of ADVANTAGE, the DEPARTMENT has learned that ADVANTAGE and/or the loan officer received a substantial commission for enrolling individuals in the Gem Cap program.

122. ADVANTAGE knew or should have known that the Gem Cap spreadsheets were inaccurate; particularly, as it relates to customers who are applying for ARM loans. Yet, ADVANTAGE has allowed its loan officers to improperly use the Gem Cap spreadsheet to promote ARM loans to potential customers.

H. Falsification of Documents.

123. A lender requires a substantial amount of documentation from the borrower prior to making the loan. SVOBODA would collect this information from the borrower and forward it to the lender. On a substantial percentage of the loans originated by SVOBODA on behalf of ADVANTAGE, fraudulent supporting documents were submitted to the lenders. The DEPARTMENT has determined that more than forty (40) such documents were submitted. Such documents included, but were not limited to the following: fake pay stubs, fake creditor letters, fake trade lines, fake and altered payment histories, altered Court documents, altered quit-claim deeds, altered bank statements, fake asset verifications, false claims of residency, and numerous documents containing forged

borrower signatures. Findings of Fact #'s 124-165 specifically outline the fraudulent documents that ADVANTAGE submitted to lenders which were discovered by the DEPARTMENT in its investigation. Had accurate information been submitted to the lender, these borrowers would not have qualified for the loan and ADVANTAGE would not have collected any fees for such loan transaction. The following examples are not intended as an exclusive list of the fraudulent documents related to loans originated by SVOBODA, as there is a strong possibility of additional fraudulent documents not yet discovered by the DEPARTMENT.

124. On April 12, 2004, ADVANTAGE's Cotner Branch faxed a GFE purportedly signed by TN to Irwin Mortgage Corp. ("IRWIN"). TN has confirmed to the DEPARTMENT that the signature appearing on the GFE is a forgery. Furthermore, the date next to the signature is "4-13-04", which is impossible since it was faxed to IRWIN on April 12, 2004, one day prior to the date the GFE was purportedly signed.

125. ADVANTAGE's loan file for customer AJ contains a GFE purportedly prepared on November 4, 2004. Such GFE contains a signature purporting to be that of AJ; however, AJ has confirmed that such signature is a forgery. AJ is the same employee who brought SVOBODA's conduct to the attention of the DEPARTMENT.

126. On January 12, 2005, ADVANTAGE faxed a Form 1003 to EquiFirst Corporation ("EQUIFIRST"). The Form 1003 contained a signature purporting to be that of AJ. AJ has confirmed that the signature is a forgery.

127. On January 12, 2005, ADVANTAGE faxed a "Broker Fee Agreement" to EQUIFIRST. This document contained a signature purporting to be that of AJ. AJ has confirmed that the signature is a forgery.

128. For customers CH & MH, ADVANTAGE submitted documentation to ARGENT. ARGENT reported to law enforcement that after the loan had been closed it had determined that the borrowers' income documents were false and inflated the borrowers' actual income.

129. ADVANTAGE's mortgage file for customer SM contains a letter from "Lynette HERN, CPA" explaining items in the borrower's tax returns. The letter is highly suspicious as the letterhead contains numerous spelling errors as it lists the company as "Hean's & Associates, CPS's,P.C"

130. A review of the database for the Nebraska Board of Public Accountancy discloses no CPA in Nebraska with the name Lynette HERN. Furthermore, a Google search of the address contained on the letter discloses that the address is actually that of a modeling agency. In addition, the telephone number listed on the letterhead was actually the telephone number for NH, the borrower's daughter who was "selling" the property to her mother. It appears that SVOBODA and NH conspired to submit a fraudulent letter to the lender.

131. On June 30, 2005, ADVANTAGE pulled a credit report for customer VP. According to the credit report, VP's previous mortgage had been the subject of a foreclosure that was finalized in February 2005.

132. On July 9, 2005, ADVANTAGE submitted VP's Form 1003 along with a "Loan Submission Form" ("LSF") to FIELDSTONE. The LSF indicated that SVOBODA was the loan originator responsible for VP's file. The LSF also contained the handwritten statement "Foreclosure ex-wife See Decree." In addition the Form 1003 requires borrowers to disclose any foreclosures in the last seven years. VP's Form 1003

had the “No” box checked to that question. VP’s Form 1003 requested a \$240,000.00 loan.

133. ADVANTAGE also submitted what was purportedly a copy of VP’s divorce decree and settlement agreement to FIELDSTONE on the same day. The decree that ADVANTAGE submitted to FIELDSTONE was dated February 7, 2003. Attached to the decree was a settlement agreement. The settlement agreement made the following distribution to PP, VP’s ex-wife and the Defendant in the divorce action, in the section entitled “Real Estate”:

The parties do own real estate located at (address redacted). The following property shall be awarded to the Defendant (PP) subject property (address redacted). The Defendant shall hold the Petitioner free and harmless from any liability thereon. Accordingly, the parties agree that in the event said real estate is for whatever reason ever sold. (sic) The net sale proceeds would be awarded to the Defendant and the Plaintiff would not be responsible for capital gains.

134. The records of the Register of Deeds confirm that VP previously owned property that was the subject of a foreclosure. A Notice of Default was sent to VP & PP on November 5, 2004, by Swanson, the duly appointed trustee pursuant to a deed of trust. Swanson executed a trustee’s deed on February 1, 2005 conveying the property to the purchaser at the trustee’s sale.

135. By submitting the decree and settlement agreement to FIELDSTONE, ADVANTAGE gave the appearance that the foreclosure had happened almost two years after the property had been awarded to PP and that VP had therefore not been the party responsible for the default that led to the foreclosure.

136. Upon closer examination of the decree and settlement agreement, it is apparent that the documents have been altered. First, the case number on the documents sent to FIELDSTONE begins with “CI 04” which indicates that the case was filed in 2004 and

thus inconsistent with the decree being signed on February 7, 2003. Furthermore, the settlement agreement contains an exhibit sticker on the front page indicating that it was submitted to the Court as Exhibit 2 on February 7, 2003. Yet the signature page of the settlement agreement indicates that it was signed and acknowledged on December 23, 2003, over ten months after it was purportedly offered as an exhibit to the Court.

137. A review of the Court file confirms that the documents have been altered. The divorce case was filed on September 3, 2004. The Court file contains a Decree that was actually dated February 7, 2005. Further, the Court file discloses that the Settlement Agreement had been dated December 23, 2004. Furthermore, the real estate paragraph of the Settlement Agreement actually stated as follows:

The parties have caused to be filed in the United States Bankruptcy Court for the District of Nebraska a Chapter 7 bankruptcy; the parties anticipate obtaining a discharge of all their debts within that bankruptcy. The parties do own the real estate located at (address redacted), however, it is the expectation of the parties that the lien holders with respect to that property will obtain relief from the automatic bankruptcy stay and will foreclose any interest that the parties have in that real estate. Accordingly, the parties agree that in the event said real estate is not foreclosed upon for whatever reason the property should be sold and any net sale proceeds divided evenly between the parties. In the event that there are excess sale proceeds following the impending foreclosure the parties agree to divide any such proceeds evenly between them.

138. By submitting the altered decree and settlement agreement, ADVANTAGE represented to FIELDSTONE that VP had not been responsible for the foreclosure that appeared on his credit report. FIELDSTONE relied upon the fraudulent information to make its decision to approve VP's loan application. Had accurate information been submitted to FIELDSTONE, it would have negatively impacted VP's application.

139. On August 1, 2005, AJ, on behalf of ADVANTAGE, faxed a pay stub for customer DM to Franklin Mortgage Funding, Inc. ("FMF"). The pay stub clearly stated

the name of DM's employer, the wages paid, and the amount withheld both for the period ending July 28, 2005, and for the entire year-to-date. AJ reported to the DEPARTMENT that SVOBODA instructed him to create a pay stub for DM as the pay stubs that DM brought to SVOBODA were not in a format that would be acceptable to FMF. While the wage information on the pay stub may have been accurate, ADVANTAGE falsely represented to FMF that the document that it sent to FMF was DM's actual pay stub.

140. On August 22, 2005, ADVANTAGE faxed a Form 1003 to M&I Bank, FSB ("M&I BANK), for customer JM. Form 1003 contains a question which asks whether the property will be used as a primary residence, secondary residence, or investment. The "primary residence" box was checked on the Form 1003. In fact at the time that ADVANTAGE submitted the Form 1003 to M&I BANK, JM had moved to Missouri and the property was no longer owner-occupied. This was a material misrepresentation as the interest rate for a mortgage loan will vary depending on whether the property is owner-occupied or an investment property, and owner-occupied loans generally have a lower interest rate. In furtherance of this scheme, SVOBODA contacted JM's former employer who was based in Nebraska and had that former employer fax JM's old Nebraska license to him. JM sent AJ to Missouri to obtain JM's signatures on the loan. SVOBODA then presented the copy of the old Nebraska driver's license (which had expired) to WOOD who then notarized the documents and falsified the license's expiration date on the Certificate of Identity.

141. In addition, ADVANTAGE's file contains a false pay stub for customer JM which appears to have been created in an attempt to qualify JM for a mortgage loan.

142. On or about August 23, 2005, ADVANTAGE faxed a Form 1003 to Wilmington Finance, a division of AIG Federal Savings Bank ("WILMINGTON

FINANCE”), for customers PF & CF. Subsequently, ADVANTAGE also submitted a property settlement agreement and a letter from US Bank. A comparison of the property settlement agreement submitted to WILMINGTON FINANCE and that in the Court file showed that it had been altered prior to submission to WILMINGTON FINANCE. Both the altered property settlement agreement and the purported US Bank letter were submitted in an apparent effort to deceive WILMINGTON FINANCE about a foreclosure and a charge-off that appeared on PF & CF’s credit report in a scheme similar to the scheme ADVANTAGE employed regarding customer VP. WILMINGTON FINANCE required additional documentation that ADVANTAGE could not produce, namely a telephone number for US Bank so that WILMINGTON FINANCE could independently verify that it actually belonged to US Bank. WILMINGTON FINANCE also informed ADVANTAGE that it then intended to contact US Bank using the verified telephone number to conduct a verbal verification of the information contained in the letter. ADVANTAGE could not provide this information since the letter it submitted was fraudulent and consequently it withdrew the loan application.

143. For customer CD, SVOBODA instructed AJ to create a false HUD-1, and to create inflated payoff statements from other banks. The false HUD-1 therefore overstated the amount of the loan proceeds used to pay other creditors and understated the amount of fees ADVANTAGE was receiving for the loan transaction. SVOBODA then showed these documents to CD to deceive him regarding the fees associated with the loan ADVANTAGE arranged. In addition, AJ, at SVOBODA’s instruction, prepared a false pay stub inflating CD’s income which SVOBODA allegedly faxed to another financial institution in support of a loan application that CD had submitted to that institution for a mortgage on a different property.

144. On September 26, 2005, ADVANTAGE faxed a completed "Request for Verification of Employment" ("VOE") to WILMINGTON FINANCE for customer TM. TM had been recently unemployed; however, SVOBODA was able to convince a representative of TM's former employer to falsely complete the form representing that TM was still employed. SVOBODA clearly knew that TM was unemployed yet he chose to submit the false VOE to WILMINGTON FINANCE.

145. On October 12, 2005, a loan closed for ADVANTAGE customers LM & EM. FIELDSTONE was the lender making the loan. In order to hide the amount of fees ADVANTAGE was charging, SVOBODA removed certain documents from the borrowers' closing packets, forged the customers' names on the documents, and returned the closing documents, including at least two (2) forged documents to MRTC. MRTC then forwarded the documents to FIELDSTONE.

146. ADVANTAGE submitted a loan for customers GC & GC to Long Beach Mortgage Company ("LONG BEACH"). The borrowers had issues with their credit scores and LONG BEACH required proof that the borrowers had timely made payments on three trade lines not contained on the credit report. SVOBODA instructed AJ to create fake trade lines showing that GC & GC had made timely payments to such creditors. On October 24, 2005, ADVANTAGE faxed three statements showing timely monthly payments to such creditors, at least two of which were fraudulent. One statement was from a vacuum cleaner store which showed that the borrowers had made timely payments for the purchase of a vacuum cleaner. The store owner has confirmed to the DEPARTMENT that GC & GC did not have a credit account and that he had no records of the borrowers ever purchasing a vacuum cleaner. A second fictitious trade line was for a fake company called "Autoflix, Inc." which again showed timely payments by the

borrowers. This statement was fraudulent as it listed AJ's home address as the company address and listed AJ's cellular telephone number as the company's telephone number.

147. ADVANTAGE submitted a loan application and supporting documents for customers RS & TS commencing on November 30, 2005, to DECISION ONE. According to RS' and TS' credit report, they were past due on both their current first mortgage, held by CitiMortgage, Inc. ("CITIMORTGAGE"), and on their second mortgage, held by Homecomings Financial Network, Inc. ("HOMECOMINGS"). Furthermore, a Notice of Default had been filed with the Register of Deed's office on November 29, 2005, by the attorney for CITIMORTGAGE. On November 30, 2005, ADVANTAGE faxed to DECISION ONE a payment history purportedly on CITIMORTGAGE's letterhead which showed that the borrowers had never been more than two weeks late on any payment. The payment history was fraudulent. On November 23, 2005, the attorney for CITIMORTGAGE had faxed ADVANTAGE a series of print-outs outlining the payment history on the account. According to the payment history faxed to ADVANTAGE by CITIMORTGAGE's attorney, RS and TS last made a payment on the loan on July 25, 2005.

148. On November 30, 2005, ADVANTAGE also faxed to DECISION ONE a "Verification of Mortgage with Payment History" for RS & TS purportedly from HOMECOMINGS. This document showed that the original mortgage amount was \$31,800.00, and that the borrowers had never been more than sixteen days late on any monthly payment. HOMECOMINGS' records, which it provided to the DEPARTMENT, show that it prepared a "Verification of Mortgage with Payment History" for ADVANTAGE on November 28, 2005. However, such document as prepared by HOMECOMINGS stated that the original mortgage amount was \$27,800.00.

It also showed that the borrowers had been more than thirty days late on their mortgage payment on eight occasions in the previous year. HOMECOMINGS further confirmed that it had not prepared the altered version of the document which ADVANTAGE had faxed to DECISION ONE.

149. On December 7, 2005, ADVANTAGE faxed a payoff statement purportedly from CITIMORTGAGE to DECISION ONE for the RS & TS loan. This payoff statement indicated that the payoff amount on the first mortgage loan was \$99,491.85 and was payable to CITIMORTGAGE, but listed its attorney's address as the address at which payment was to be sent. The payoff statement was purportedly on CITIMORTGAGE's letterhead. In reality, on November 21, 2005, the attorney for CITIMORTGAGE had faxed a payoff statement to ADVANTAGE. The payoff statement was on the attorney's letterhead. The payoff amount listed was \$99,491.85 plus attorney fees in the amount of \$675.00 relating to the initiation of foreclosure proceedings. ADVANTAGE then re-created the payoff statement on CITIMORTGAGE's letterhead and deleted the reference to attorney fees as part of its scheme to hide the current foreclosure from DECISION ONE.

150. On December 16, 2005, a Form 1003 was faxed to FIELDSTONE for customers KH & JH. The borrowers' credit report showed that the borrowers' current mortgage loan with AMC Mortgage Services, Inc. ("AMC") was in default in the amount of \$7,014.00 and that a foreclosure had been filed in December 2005.

151. FIELDSTONE conditionally approved the loan for KH & JH but provided that the borrowers must provide evidence that no Notice of Default had been filed and that there had been no foreclosure proceedings initiated by AMC.

152. On December 23, 2005, ADVANTAGE faxed a letter to FIELDSTONE purportedly from Jillian Ojeda-Guillegos at AMC. The letter appeared to be on AMC's

letterhead. The letter stated that AMC had not filed a Notice of Default or started foreclosure proceedings on KH & JH's loan.

153. Also on December 23, 2005, ADVANTAGE faxed FIELDSTONE a payoff statement purportedly from AMC. According to this payoff statement, the next payment due on the loan was the December 2005 mortgage payment. The unpaid principal balance on the loan was \$263,909.19 with interest due in the amount of \$2,811.15. This payoff statement also did not contain a listing for unpaid late charges, listed \$0.00 as the amount due for foreclosure fees and listed \$0.00 as the amount due for NSF charges.

154. Upon a comparison of the letter ADVANTAGE faxed to FIELDSTONE with various letters that the DEPARTMENT has received from AMC, it was apparent that there was a significant variance between the two letterheads and that the one sent by ADVANTAGE to FIELDSTONE was missing key information, including the address and telephone number for AMC. The DEPARTMENT contacted AMC, which confirmed that the letter that ADVANTAGE faxed to FIELDSTONE was fraudulent and that AMC had no employee named Jillian Ojeda-Guillegos.

155. AMC also confirmed that the payoff statement that ADVANTAGE faxed to FIELDSTONE had been altered. AMC's actual statement showed that the payment was due for the August 1, 2005 mortgage payment. It also showed that the unpaid principal balance was \$254,979.47, the unpaid interest was \$8,433.45, late charges were \$1,500.64, NSF charges were \$75.00, and there was a foreclosure fee of \$807.58. ADVANTAGE had altered the payment history as part of its scheme to hide the fact that the borrowers were in foreclosure from FIELDSTONE.

156. On December 30, 2005, ADVANTAGE faxed a Form 1003 to DECISION ONE for customer BS. In addition, ADVANTAGE faxed a copy of a Decree of

Dissolution of Marriage and two quit-claim deeds from BS conveying property to her former husband TS, and one quit-claim deed conveying the property from TS to BS for which BS was seeking to obtain a mortgage loan. DECISION ONE's investigation determined that one of the quit-claim deeds was fraudulent and it did not allow the loan to close. In addition, the DEPARTMENT has reviewed the court file for BS & TS' divorce action and determined that the decree had also been altered. In reality, BS had been awarded two properties in the divorce decree, but was also responsible for the mortgage payments on each property. The divorce decree and quit-claim deeds were altered to hide from DECISION ONE the fact that BS was responsible for two mortgage payments.

157. On January 10, 2006, ADVANTAGE faxed a Form 1003 to DECISION ONE for customer TMS, who happened to be the husband of SVOBODA's assistant AS. ADVANTAGE also faxed a copy of the credit report that ADVANTAGE had conducted on TMS. According to this credit report, TMS had never been late on his mortgage payment to IRWIN. However, when DECISION ONE pulled a credit report on TMS, it discovered that TMS had one payment sixty (60) days late and four (4) payments thirty (30) days late. DECISION ONE confirmed with the credit bureau that the credit report submitted by ADVANTAGE had been altered.

158. On January 10, 2006, ADVANTAGE faxed a Form 1003 to DECISION ONE for customer JHW. Also on January 10, 2006, ADVANTAGE faxed copies of bank account statements for customer JHW. DECISION ONE discovered that the bank statements had been altered to hide the fact that the statements were actually for a business account, rather than a personal bank account.

159. On January 6, 2006, ADVANTAGE faxed a Uniform Underwriting and Transmittal Summary to FIELDSTONE for loan customers TH & BH.

160. FIELDSTONE ran a credit report on TH & BH on January 11, 2006. The credit report disclosed that the borrowers' current mortgage with Washington Mutual Home Loans ("WAMU") was in default and had previously been in foreclosure.

161. ADVANTAGE ran its own credit report on TH & BH and had discovered the default that was listed on the credit report. Therefore, ADVANTAGE had anticipated that FIELDSTONE would run a credit report that would show a default on the WAMU loan. In anticipation of this issue, ADVANTAGE had faxed to FIELDSTONE on January 6, 2006, a transaction history purportedly from WAMU which showed the borrowers had been making timely payments to WAMU. This was submitted by ADVANTAGE to show that the default on the WAMU loan listed on the credit report was an error.

162. On February 3, 2006, an attorney for WAMU filed a Notice of Default with the Register of Deed's office. Therefore, it appears that the WAMU payment history faxed by ADVANTAGE to FIELDSTONE was fraudulent as a Notice of Default would not have been filed unless the mortgage loan was in default.

163. On January 23, 2006, SVOBODA faxed a number of bank statements to FIELDSTONE purportedly for customers BH & TH. FIELDSTONE used the information contained in the bank statements to determine the borrowers' monthly income. Based upon the bank statements, FIELDSTONE approved the loan.

164. The bank statements that SVOBODA faxed to FIELDSTONE were fraudulent. These bank statements that SVOBODA represented belonged to BH & TH, actually were the bank statements for JHW discussed in Finding of Fact #158 above. SVOBODA had used white-out correction fluid to cover JHW's name, the name of her business, and her address, and then typed TH & BH's name and address at the top of the

statements. In addition, the word "Business" in front of the word "Account" had been covered with white-out. Since FIELDSTONE only received faxed copies of the bank statements, the fraud was difficult to detect. Had BH & TH's actual bank statements been submitted, such statements would have disclosed a significantly lower monthly income than what was represented in the statements for JHW's business.

165. The loan for BH & TH closed on January 25, 2006. According to the HUD-1, another mortgage broker received the broker compensation. SVOBODA worked for such mortgage broker after his termination from ADVANTAGE. However, SVOBODA subsequently wrote a check to ADVANTAGE for its share of the broker fees in the amount of \$2,239.00, with the last name of BH & TH on the memo line. Therefore, the loan originated at ADVANTAGE and it received the broker compensation for the loan. ADVANTAGE is therefore responsible for SVOBODA's conduct in association with the loan.

I. ADVANTAGE's Failure to Maintain Documents.

166. The DEPARTMENT served a subpoena at ADVANTAGE's main office location on April 13, 2006. The subpoena demanded certain documents associated with loans that had closed and loan applications that had been denied or withdrawn.

167. While serving the subpoena, representatives of the DEPARTMENT met with GOLDBERG who indicated that ADVANTAGE did not have any records of loan application files for any of SVOBODA's loans which did not ultimately close.

168. During its investigation of this matter, the DEPARTMENT has discovered loan files originated by SVOBODA on behalf of ADVANTAGE for CD, AB, RD & SD, and BH & TH whose loans closed but for which ADVANTAGE did not have a loan file. In addition, the DEPARTMENT has discovered that loan applications for DG & AG, JW

& LW, SG, and PF & CF had been submitted to lenders by SVOBODA on behalf of ADVANTAGE, but such loans did not close. ADVANTAGE did not have any loan application files for such customers.

169. AJ provided the DEPARTMENT with a list of customers who SVOBODA was working with at the time he left employment at ADVANTAGE. Many of these loan files were at a preliminary stage of the loan origination process and the loan applications had not been submitted to a lender for consideration. However, in many cases credit reports had been conducted on these individuals. ADVANTAGE has no loan application files for these individuals unless the loan actually closed.

170. Loan files contain sensitive personal financial information. This information includes the customer's Social Security number, date of birth, credit card numbers, and bank account numbers. It is imperative for a licensee to properly maintain these records and after time to properly dispose of the customer's information to insure that the information is not used to commit fraud. Instead, ADVANTAGE allowed a known felon with a recent history of financial crime to have unfettered access to this sensitive financial information and had no safeguards in place to protect the confidentiality of such information.

171. The DEPARTMENT's subpoena clearly required that ADVANTAGE provide copies of customers' entire loan files. As such, the subpoena clearly included TIL Disclosures as documents that ADVANTAGE was to produce. ADVANTAGE provided the DEPARTMENT with no TIL Disclosures for any loan file. When the DEPARTMENT obtained the corresponding loan files from the lenders, the DEPARTMENT received copies of dozens of such TIL Disclosures that ADVANTAGE had prepared and faxed to the lenders. Therefore, it appears that ADVANTAGE failed to

retain copies of the TIL Disclosures it prepared, despite the fact that such disclosures are specifically mentioned in the statute governing records retention as documents which the mortgage banker is required to retain for at least two years.

J. ADVANTAGE's Excessive Fees.

172. ADVANTAGE had no corporate policies concerning fees. Instead, ADVANTAGE gave discretion to individual loan originators to establish the amount of fees that ADVANTAGE would receive for each loan transaction. SVOBODA therefore had the authority to determine the amount of fees ADVANTAGE charged on those loans he was originating for ADVANTAGE.

173. In many of the loans that SVOBODA originated, the fees ADVANTAGE charged were unreasonable and unnecessary. A comparison of the fees charged by SVOBODA and those charged by other loan originators at ADVANTAGE shows that the fees associated with loans originated by SVOBODA were on average more than twice as high as fees charged by other loan originators. ADVANTAGE has not and cannot provide any justification for the difference in the amount of fees charged.

174. SVOBODA repeatedly engaged in conduct designed to hide the amount of the fees that ADVANTAGE was charging its customers. As a result, ADVANTAGE understated broker fees on the GFEs, failed to disclose yield spreads on the GFEs, failed to provide a copy of the GFE to the borrower, misrepresented the nature of the fees on the GFE, failed to explain HUD-1s at closing, misrepresented the existence of a tax credit for fees paid to mortgage brokers, forged customer signatures on closing documents, and removed documents from closing packets. All of these actions were done to hide the amount of the fees from the borrowers. Had SVOBODA and ADVANTAGE believed

that the fees were reasonable and necessary, there would have been no reason to engage in deception to hide the amount of the fees from borrowers.

K. ADVANTAGE's Failure to Supervise Svoboda.

175. ADVANTAGE has a duty to supervise its employees and agents to insure that such employees and agents are operating in accordance with the law and not engaging in fraudulent or illegal conduct.

176. ADVANTAGE allowed SVOBODA to work from home unsupervised, allowed him to process his own loans, and allowed him to handle his own closings. Had ADVANTAGE required SVOBODA to use a loan processor and to close loans at title companies, it would have been much more difficult, if not impossible, for SVOBODA to engage in many of the fraudulent and predatory practices which the DEPARTMENT discovered during its investigation.

177. ADVANTAGE had no system in place to monitor SVOBODA's loan origination activities. In fact, ADVANTAGE did not know which loans SVOBODA was working on until the loans closed and it received the check for the fees from the title company. ADVANTAGE does not have loan application files for customers whose loans did not close. Moreover, ADVANTAGE does not have the identities of those customers in their computer system. As a result, ADVANTAGE has no way of knowing who submitted loan applications to ADVANTAGE through its loan originators including SVOBODA.

178. To the extent that ADVANTAGE had systems and procedures in place to monitor its loan originators' activities, it allowed SVOBODA to circumvent such requirements. ADVANTAGE allowed SVOBODA to work from home, to conduct his own processing, and to close loans by himself. To the best of the DEPARTMENT's

knowledge, no other loan originator at ADVANTAGE was given such latitude in not following standard procedures.

179. ADVANTAGE's failure to monitor the loans that SVOBODA was originating can be illustrated by the loans for customer RD. RD submitted a Form 1003 to ADVANTAGE on October 26, 2005. SVOBODA, on behalf of ADVANTAGE, submitted RD's Form 1003 to FIELDSTONE which made both first and second mortgage loans. The loans closed on November 18, 2005, with MRTC as the title company responsible for the closing. MRTC made a check payable to ADVANTAGE in the amount of \$6,762.19. SVOBODA deposited the check into his personal bank account. ADVANTAGE had no record of this loan file and did not know it existed until law enforcement contacted ADVANTAGE about the unusual deposit into SVOBODA's bank account.

180. ADVANTAGE ignored a number of warning signs regarding SVOBODA. Customer TN filed a complaint with the Better Business Bureau regarding SVOBODA in 2004. Customers BC & MC orally complained to GARY LEVINE regarding SVOBODA in the summer of 2005. Also in the fall of 2005, AJ warned ADVANTAGE that SVOBODA was engaging in fraudulent behavior. Despite these repeated warnings, ADVANTAGE conducted no serious investigation into SVOBODA's behavior. Had ADVANTAGE simply reviewed the files on which SVOBODA was working, they would have discovered evidence of document alteration.

181. ADVANTAGE was unaware that SVOBODA had hired AS as his assistant. Such lack of knowledge is further evidence of ADVANTAGE's failure to supervise SVOBODA's activities.

182. GARY LEVINE and GOLDBERG were responsible for supervising SVOBODA, knew that such supervision was not occurring, and actively participated in the decision to not supervise SVOBODA.

183. ADVANTAGE's decision to hire SVOBODA as a loan originator and the failure to supervise SVOBODA's actions caused significant harm to Nebraska consumers. Nebraska consumers were charged unnecessary, unreasonable, and largely undisclosed fees for the loans they obtained through ADVANTAGE. Moreover, SVOBODA's misrepresentations about the loan terms caused consumers to take loans that they could not afford. Finally, ADVANTAGE recklessly endangered its customers by allowing a convicted felon with a history of financial crimes access to their most sensitive financial information.

III. VIOLATIONS OF THE ACT

184. ADVANTAGE's conduct described in Findings of Fact #1-183 represents multiple, serious, and in many cases willful, violations of the Act, including Neb. Rev. Stat. §§ 45-706(1); 45-707(1)(a)-(d), (g), & (l); 45-711(8)-(9); & 45-714(1)(c), (e), (i), (l), and (n). In addition, ADVANTAGE violated federal laws governing mortgage transactions including, but not limited to 24 CFR 3500.7 (2006) and 12 CFR 2600.19 (2006).

185. The DEPARTMENT has incurred a minimum of ten thousand dollars in investigation costs in this matter.

IV. CIVIL ACTION

186. On September 13, 2007, the Nebraska Attorney General and the DEPARTMENT initiated a civil action in the District Court of Lancaster County, Nebraska, pursuant to Neb.

Rev. Stat. § 45-717 (Cum. Supp. 2006), the Nebraska Consumer Protection Act, §§ 59-1601 *et seq.* (Reissue 2004), and the Nebraska Uniform Deceptive Trade Practices Act, §§ 87-301 *et seq.* (Reissue 1999 & Cum. Supp. 2006). ADVANTAGE, GARY LEVINE, MARCEE LEVINE, GOLDBERG, SCOTT LEVINE, and KRISTINE LEVINE were each named as Defendants in said Action.

CONCLUSIONS OF LAW

1. Neb. Rev. Stat. § 45-705(1) (Cum. Supp. 2006) provides, in pertinent part, that no person shall act as a mortgage banker or use the title mortgage banker in this state unless he, she, or it is licensed or has registered with the DEPARTMENT.

2. Neb. Rev. Stat. § 45-702(6) (Cum. Supp. 2006) defines the term “mortgage banker” as any person not exempt under Section 45-703 who, for compensation or gain or in the expectation of compensation or gain, directly or indirectly makes, originates, services, negotiates, acquires, sells, arranges for, or offers to make, originate, service, negotiate, acquire, sell, or arrange for ten or more mortgage loans in a calendar year.

3. Neb. Rev. Stat. § 45-702(8) (Cum. Supp. 2006) defines the term “mortgage loan” as “any loan or extension of credit secured by a lien on real property, including a refinancing of a contract of sale or an assumption or refinancing of a prior loan or extension of credit.”

4. Neb. Rev. Stat. § 45-702(10) (Cum. Supp. 2006) defines the term “real property” as an “owner-occupied single-family, two-family, three-family, or four-family dwelling which is located in this state, which is occupied, used, or intended to be occupied or used for residential purposes, and which is, or is intended to be, permanently affixed to the land.”

5. Neb. Rev. Stat. § 45-711(8) (Cum. Supp. 2006) provides that the licensee shall maintain a copy of all documents and records relating to each mortgage loan and application for a mortgage loan, including, but not limited to, loan applications, federal Truth in Lending Act statements, good faith estimates, appraisals, notes, rights of rescission, and mortgages or trust deeds for a period of two years after the date the mortgage loan is funded or the loan application is denied or withdrawn.

6. ADVANTAGE committed multiple violations of Neb. Rev. Stat. § 45-711(8) (Cum. Supp. 2006) as the DEPARTMENT obtained from lenders eight (8) loan files originated by SVOBODA on behalf of ADVANTAGE for which ADVANTAGE does not have a loan file. Furthermore, in many of the loan files which do exist, ADVANTAGE did not retain all of the documents that were sent to the lenders. In addition, ADVANTAGE only retained loan files for closed loans and has no loan application file for any loan application that was denied or withdrawn. As such, ADVANTAGE committed a large number of additional violations of Section 45-711(8) as it was required to keep copies of all loan documents in all loan files including those for loan applications that were withdrawn or denied.

7. Neb. Rev. Stat. § 45-711(9) (Cum. Supp. 2006) requires that a licensee notify the DEPARTMENT of a material development within thirty days after its occurrence. Opening and closing of branch offices is a material development requiring notification.

8. ADVANTAGE violated Neb. Rev. Stat. § 45-711(9) (Cum. Supp. 2006) by failing to notify the DEPARTMENT within thirty days of the opening and within thirty days of the closing of the branch office located at SVOBODA's house. Therefore ADVANTAGE committed two (2) violations of this Section.

9. 24 CFR 3500.7 (2006) requires that a lender deliver a GFE to a potential borrower within three business days of accepting a loan application. If a mortgage broker is utilized in the transaction, the mortgage broker must deliver a GFE within three days after accepting an application.

10. 12 CFR 226.19 (2006) requires that a lender deliver a TIL Disclosure to the potential borrower within three business days of accepting a loan application.

11. Neb. Rev. Stat. § 45-714(1)(c) (Cum. Supp. 2006) provides that a licensee, an officer, an employee, or an agent of the licensee shall not misrepresent or conceal material facts or make false promises intended to influence, persuade, or induce an applicant for a mortgage loan or a borrower to take a mortgage loan or cause or contribute to such a misrepresentation by any person acting on a licensee's or any other lender's behalf.

12. ADVANTAGE repeatedly violated 24 CFR 3500.7 (2006) and Neb. Rev. Stat. § 45-714(1)(c) (Cum. Supp. 2006) by (a) preparing GFEs which substantially understated the amount of the mortgage broker fees; (b) preparing GFEs which did not disclose the yield spread that ADVANTAGE intended to collect; and (c) failing to deliver the GFEs to the borrowers.

13. ADVANTAGE repeatedly violated 12 CFR 226.19 (2006) and Neb. Rev. Stat. § 45-714(1)(c) (Cum. Supp. 2006) by preparing inaccurate TIL Disclosures. Such TIL Disclosures substantially understated the APR by listing the actual interest rate rather than the APR. In addition, the TIL Disclosures were inaccurate as they failed to disclose the increase in the monthly payment associated with the increase of the interest rate from a teaser rate to the fully-indexed rate. In addition, in many cases ADVANTAGE failed to leave copies of the TIL Disclosures with consumers as required.

14. ADVANTAGE also committed a substantial number of violations of Neb. Rev. Stat. § 45-714(1)(c) (Cum. Supp. 2006), including, but not limited to, (a) misrepresenting the amount of the broker fees; (b) misrepresenting the recipients of the fees; (c) falsely stating that prepayment penalties on prior loans had been waived; (d) misrepresenting the terms of the loans, including the existence of prepayment penalties, interest rates, and monthly payment amounts; (e) misrepresenting the savings associated with the Gem Cap system; and (f) removing documents from the closing packets. Each misrepresentation constitutes a separate violation of this Section.

15. Neb. Rev. Stat. § 45-714(1)(e) (Cum. Supp. 2006) provides that a licensee shall not engage in any transaction, practice, or business conduct that is not in good faith or operates a fraud upon any person in the making of any mortgage loan.

16. ADVANTAGE committed a substantial number of violations of Neb. Rev. Stat. § 45-714(1)(e) (Cum. Supp. 2006), including, but not limited to, (a) obtaining inflated appraisals on the borrower's property; (b) using the Gem Cap spreadsheet as a sales tactic to promote ARMs; (c) simultaneously promoting Gem Cap while at the same time promoting a refinance in two years prior to the interest rate on an ARM adjusting; (c) handling closings without a notary public present, and allowing a notary public to falsely notarize the document; (d) originating loans that had no net benefit for consumers; and (e) concealing from ARGENT the fact that SVOBODA's down payment for his personal mortgage loan was actually a loan from ADVANTAGE.

17. Neb. Rev. Stat. § 45-714(1)(i) (Cum. Supp. 2006) provides that a licensee shall not fail to account for or deliver to any person personal property obtained in connection with the mortgage banking business, including, but not limited to, money,

funds, deposits, checks, drafts, mortgages, or other documents or things of value which the licensee was not entitled to retain.

18. ADVANTAGE violated Neb. Rev. Stat. § 45-714(1)(i) (Cum. Supp. 2006) as it failed to properly account for the money that customer AB was entitled to receive after closing as such funds actually were deposited into SVOBODA's bank account.

19. Neb. Rev. Stat. § 45-714(1)(l) (Cum. Supp. 2006) provides that a licensee may not assess any fees against the borrower other than those which are reasonable and necessary, including actual charges incurred in connection with the making, closing, disbursing, servicing, extending, transferring, or renewing of a loan, including, but not limited to, (i) prepayment charges, (ii) delinquency charges, (iii) premiums for hazard, private mortgage, disability, life, or title insurance, (iv) fees for escrow services, appraisal services, abstracting services, title services, surveys, inspections, credit reports, notary services, and recording of documents, (v) origination fees, (vi) interest on interest after default, and (vii) costs and charges incurred for determining qualification for the loan proceeds and disbursement of the loan proceeds.

20. ADVANTAGE repeatedly violated Neb. Rev. Stat. § 45-714(1)(l) (Cum. Supp. 2006) as it collected fees that were not reasonable and necessary. ADVANTAGE had no policy concerning fees that it would charge its customers; instead, loan originators had discretion as to setting fee amounts. As a result, SVOBODA's customers were charged fees that were more than double the fees that customers whose loans were originated by other loan originators at ADVANTAGE. It appears that the sole reason that customers of SVOBODA were charged fees twice as high as those fees paid by customers of other loan originators is because the customers happened to have SVOBODA as their loan originator. Furthermore, ADVANTAGE engaged in substantial deception to hide

the amount of fees from their customers, including inaccurate GFEs, removing closing documents, and oral misrepresentations, as it was aware that customers might elect not to proceed with the mortgage transaction if the customers were aware of the full amount of fees being charged. Each loan on which ADVANTAGE collected an unreasonable and unnecessary fee is a separate violation of this Section.

21. Neb. Rev. Stat. § 45-714(1)(n) (Cum. Supp. 2006) provides that a licensee may not falsify any documentation relating to a mortgage loan or a mortgage loan application.

22. ADVANTAGE committed multiple violations of Neb. Rev. Stat. § 45-714(1)(n) (Cum. Supp. 2006) as it submitted more than forty (40) fraudulent documents to various lenders in support of mortgage loan applications. Each falsified document represents a separate violation of this Section.

23. Neb. Rev. Stat. § 45-707(1)(c) (Cum. Supp. 2006) provides that the Director may revoke or suspend a license and/or impose an administrative fine for each separate violation of the Act if the Director finds that the licensee has violated a voluntary consent or compliance agreement which had been entered into with the Director.

24. ADVANTAGE committed multiple violations of Neb. Rev. Stat. § 45-707(1)(c) (Cum. Supp. 2006) through its multiple violations of the 2004 Consent Agreement, including failing to change its arrangement with LAW's corporation as required, and by failing to notify the DEPARTMENT of the opening of a branch at SVOBODA's home as required by the Consent Agreement.

25. Neb. Rev. Stat. § 45-707(1)(d) (Cum. Supp. 2006) provides that if the Director finds that a licensee has made or caused to be made, in any document filed with the Director or in any proceeding under the Act, any statement which was, at the time and in

light of the circumstances under which it was made, false or misleading in any material respect or suppressed or withheld from the Director any information which, if submitted by the licensee, would have resulted in denial of the license application, the Director may suspend or revoke the license, or issue an administrative fine not exceeding five thousand dollars for each violation of the Act.

26. ADVANTAGE committed three violations of Neb. Rev. Stat. § 45-707(1)(d) (Cum. Supp. 2006) including, but not limited to, (a) submitting a copy of the LPAA for loan originator SVOBODA that falsely represented that he had no criminal convictions when in fact he was incarcerated at the time the LPAA was submitted; (b) submitting LPAA's which represented that ADVANTAGE would be collecting the fees from a title company and paying the loan originator's share directly to the loan originator when in reality nothing had changed in the arrangement with LAW; and (c) failing to list SVOBODA's branch office on its 2006 Mortgage Banker Renewal Application.

27. Neb. Rev. Stat. § 45-707(1)(g) (Cum. Supp. 2006) provides that the Director may revoke or suspend a license and/or impose an administrative fine for each separate violation of the Act if the Director finds that a licensee knowingly has employed any individual or knowingly has maintained a contractual relationship with any individual acting as an agent, if such individual has been convicted of, pleaded guilty to, or was found guilty after a plea of nolo contendere to (i) a misdemeanor under any state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, financial institution business, or installment loan business or (ii) any felony under state or federal law.

28. ADVANTAGE was fully aware of SVOBODA's criminal history as it initially hired SVOBODA through a prison work-release program. Furthermore, SVOBODA

disclosed the conviction on an employment application that ADVANTAGE required. Moreover, ADVANTAGE was on notice that hiring of individuals with felony convictions was grounds for administrative action based upon LAW's email to GOLDBERG and GARY LEVINE. ADVANTAGE willfully violated this Section as it chose to disregard the prohibition in the Act and elected to assume the risk of such administrative action by hiring SVOBODA.

29. Neb. Rev. Stat. § 45-707(1)(1) (Cum. Supp. 2006) provides that the Director may revoke or suspend a license and/or impose an administrative fine for each separate violation of the Act if the Director finds that the licensee has failed to reasonably supervise any officer, employee, or agent to assure his compliance with the Act or with any other state or federal law applicable to the mortgage banking business.

30. ADVANTAGE systematically failed to supervise its loan originators including SVOBODA and AJ. It also failed to supervise LAW to insure that she would not hire felons as loan originators at the Cotner Branch. Not only was ADVANTAGE's supervision of SVOBODA and AJ unreasonable, such supervision appears to have been virtually nonexistent. ADVANTAGE's failure to supervise includes, but is not limited to, the following: (a) allowing a convicted felon to work from his own home alone rather than requiring him to work from the branch office; (b) allowing SVOBODA to process his own loans and to handle his own closings; (c) failing to adopt corporate policies concerning fees; (d) failing to review initial disclosures prepared by SVOBODA to insure that such disclosures were prepared properly; (e) failing to keep records of all customers who submitted loan applications to SVOBODA; (f) allowing SVOBODA to hire his own assistants; (g) conducting no review of the documents in either SVOBODA's closed or pending loan files; and (h) failing to investigate the complaints that it received regarding

SVOBODA. Based upon the facts alleged in the Findings of Fact, it appears that ADVANTAGE chose not to supervise SVOBODA's activities in violation of the Act's requirements. Each loan file on which ADVANTAGE failed to supervise its loan officer's activities, including those of SVOBODA, is a separate violation of the Act. Since SVOBODA originated loans for at least fifty-six (56) Nebraska residents, ADVANTAGE has committed at least fifty-six (56) violations of this Section.

31. Neb. Rev. Stat. § 45-706(1) (Cum. Supp. 2006) provides that the business of a mortgage banker shall be operated honestly, soundly, and efficiently in the public interest consistent with the purposes of the Act.

32. Neb. Rev. Stat. § 45-707(1)(b) (Cum. Supp. 2006) provides that the Director may revoke or suspend a license and/or impose an administrative fine for each separate violation of the Act if the Director finds that a fact or condition exists which, if it had existed at the time of the original application for the license, would have warranted the Director to deny the application.

33. The facts alleged in the Findings of Fact above demonstrate that ADVANTAGE is not being operated honestly, soundly, and efficiently in the public interest as its employees and officers have engaged in a significant number of fraudulent and predatory practices. As such a condition exists that would have warranted a denial of the original license application. Therefore, administrative action pursuant to Neb. Rev. Stat. § 45-707(1)(b) (Cum. Supp. 2006) is appropriate.

34. Neb. Rev. Stat. § 45-707(1)(a) (Cum. Supp. 2006) provides that the Director may revoke or suspend a license and/or impose an administrative fine for each separate violation of the Act if the Director finds that the licensee has materially violated or demonstrated a continuing pattern of violating the Act, rules and regulations adopted and

promulgated under the Act, any order, issued under the Act, or any other state or federal law applicable to the conduct of its business.

35. ADVANTAGE has committed a substantial number of material violations of the Act and has engaged in a continuing pattern of violations of the Act and of federal law applicable to the conduct of its business. Therefore, administrative action pursuant to Neb. Rev. Stat. § 45-707(1)(a) (Cum. Supp. 2006) is appropriate.

36. Neb. Rev. Stat. § 45-717.01(1) (Cum. Supp. 2006) provides that the Director may, following a hearing under the Administrative Procedures Act, impose an administrative fine of not more than five thousand dollars per violation against any officer, director, shareholder, partner, or member of a licensee, if the Director finds the licensee or any other such person participated in or had knowledge of any act prohibited by Sections 45-707, 45-711, and 45-714 or otherwise violated the Act. Such administrative fine shall be in addition to or separate from any fine imposed against a licensee pursuant to Section 45-707.

37. Neb. Rev. Stat. § 45-717.01(2) (Reissue 2004) provides that if the Director finds, after notice and hearing in accordance with the Administrative Procedure Act, that any person has knowingly committed any act prohibited by Section 45-707 or has otherwise violated the Act, the Director may order such person to pay an administrative fine not exceeding five thousand dollars for each separate violation plus the costs of investigation.

38. Neb. Rev. Stat. § 45-719 (Reissue 2004) provides that the Act shall be construed liberally so as to effectuate its purposes.

39. The facts listed in the above Findings of Fact constitute a sufficient basis for the Director to have determined that ADVANTAGE has materially violated the Act and that its license should be revoked and an administrative fine in an amount of not more than five

thousand dollars for each separate violation plus costs of investigation should be imposed in accordance with Neb. Rev. Stat. § 45-707(d) (Cum. Supp. 2006) and Neb. Rev. Stat. § 45-717.01(2) (Cum. Supp. 2006).

40. The facts listed in the above Findings of Fact constitute a sufficient basis for the Director to have determined that GOLDBERG, GARY LEVINE, MARCEE LEVINE, and SCOTT LEVINE each have materially violated the Act and that an administrative fine in an amount of not more than five thousand dollars for each separate violation plus costs of investigation should be imposed in accordance with Neb. Rev. Stat. § 45-707(d) (Cum. Supp. 2006), Neb. Rev. Stat. § 45-717.01(1) (Cum. Supp. 2006), and Neb. Rev. Stat. § 45-717.01(2) (Cum. Supp. 2006).

41. This Order to Show Cause is necessary and appropriate in the public interest for the protection of Nebraska residents and is consistent with the purposes fairly intended by the policy and provisions of the Mortgage Bankers Registration and Licensing Act.

ORDER

IT IS THEREFORE ORDERED that Advantage Mortgage Service, Inc., 12111 Pacific Street, Omaha, Nebraska; shall appear before the Director to show cause as to why its mortgage banker license should not be suspended or revoked and/or why it should not be fined and costs should not be imposed upon it.

IT IS FURTHER ORDERED that Robert M. Goldberg, its President; Marcee Levine, its Branch Manager; Gary Levine, its Branch Manager; and Scott Levine, its former President shall appear before the Director to show cause as to why they should not be fined and costs should not be imposed upon them.

IT IS FURTHER ORDERD that further proceedings on this matter are stayed until sixty days after the resolution of the civil action pending in the District Court of Lancaster County, Nebraska, unless upon motion of any of the parties, good cause is shown for setting a hearing date prior to the resolution of the pending civil mater.

DATED this 13th day of September, 2007.



STATE OF NEBRASKA
DEPARTMENT OF BANKING AND FINANCE

By: John Munn
John Munn, Director

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